

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of )

Implementation of Section 9 )  
 of the Communications Act )

Assessment and Collection of )  
 Regulatory Fees for the 1994 )  
 Fiscal Year )

MD Docket No. 94-19

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FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF SECRETARY

**COMMENTS OF**  
**RAM MOBILE DATA USA LIMITED PARTNERSHIP**

RAM Mobile Data USA Limited Partnership ("RMD") hereby submits the following comments with respect to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding. RMD's comments focus on the regulatory fees that are to be imposed on wide area SMR systems.

As demonstrated below, the fee schedule set forth in the NPRM for traditional, single site, single license SMR systems should not apply to multiple site wide-area, frequency reusing 900 MHz SMR systems. Absent appropriate clarification, as described below, the "small" fees applicable to SMR systems could amount in excess of \$150,000 for RMD alone,<sup>1</sup> a fee which is well out of line with the fees which are to be imposed upon other similarly situated private and common carrier services and bears no relationship either to the benefits conferred or the work required to regulate RMD's network.

**A. THE FEE STRUCTURE PROPOSED FOR SMR SYSTEMS SHOULD NOT BE APPLIED TO 900 MHZ WIDE AREA SMR SYSTEMS.**

The underlying problem in applying the fee structure devised for traditional SMR systems to nationwide mobile data systems using SMR frequencies, such as RMD's, is that the license benefits conferred upon RMD and the Commission staff time required to administer them are related to the number of Designated Filing Areas ("DFAs") licensed and not the number of individually licensed sites within a particular

<sup>1</sup> RMD currently has 1,910 SMR "licenses," a figure which is constantly changing and growing as RMD modifies and expands its system. At \$16/license and with a five year payment required, the fee would be \$152,800.

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DFA. The numerous secondary sites constructed by RMD, while individually licensed, do not grant exclusive use or even a protection against interference that would apply in shared use situations,<sup>2</sup> and are, indeed, transparent for regulatory purposes. Similarly, the multiple primary sites facilities fall under individual DFA licenses; they are treated as a single license for loading and other administrative purposes;<sup>3</sup> *i.e.*, when a new site is added, its license period dates back to the initial license; a single call sign is transmitted for the entire network, etc.<sup>4</sup>

In addition, while the Private Radio Bureau's application procedures permit up to six sites to be included under a single license,<sup>5</sup> in working with the Private Radio Bureau staff to simplify its regulatory oversight of RMD's network, RMD has specified no more than one site per license. Absent clarification as how the fee structure will be applied to multiple site systems, RMD may have no choice but to seek to consolidate multiple sites under individual licenses, which would dramatically reduce RMD's regulatory fee exposure, but have the perverse and unintended effect of burdening the Commission's oversight of RMD's system.

**B. INTERIM RELIEF: FEES SHOULD BE IMPOSED ONLY WITH RESPECT TO 900 MHZ SMR LICENSES THAT CONFER RIGHTS TO EXCLUSIVE USE; PAYMENT SHOULD BE MADE ON A ANNUAL BASIS.**

The fee schedule adopted by Congress reflects an intent to charge SMR licensees with regulatory fees based upon the number of licenses for which they are granted rights to exclusive use. For SMR licensees such as RMD, the licenses should be deemed to include only the underlying DFA license (or licenses, if more than one ten channel license is held) that have been authorized. The construction of additional sites effectively confers no greater rights or benefits; their authorization is ministerial in nature; and their existence should not result in additional fees. Furthermore, it would be contrary to the public interest to charge higher regulatory fees for multiple sites when licensed individually by site, than when the same sites are combined under a single license (as permitted), particularly when it is more difficult for the Commission staff to oversee operations under a single license.

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<sup>2</sup> Protection for these sites is proposed in the context of the Commission's Phase II proceeding for 900 MHz SMR licenses.

<sup>3</sup> See American Mobile Data Communications, Inc. 4 FCC Rcd. 3802, 3806 (1989).

<sup>4</sup> Order, Request for [Station Identification] Waiver by Ram Mobile Data, Inc. (RMD) and RMD System Participants (Mar. 1, 1990).

<sup>5</sup> The Common Carrier Bureau's Mobile Services Division has procedures that can accommodate up to 99 sites on a single license.

RMD also urges that regulatory fees for SMRs be charged on an annual basis, as opposed to a five-year basis. Given the likely changes in the manner in which such systems are licensed (see discussion below), it would add greatly to the confusion and burden of the existing fee structure to collect regulatory fees on a five-year basis. Further, as indicated above, the overall fees that may be imposed on SMR systems are hardly "small" or nominal and, accordingly, fall outside the category of minor fees which, for administrative convenience, the Congress has authorized the Commission to collect in multiple- year increments.

**C. LONG-TERM SOLUTION: REGULATORY FEES FOR 900 MHZ SMR WIDE AREA SYSTEMS SHOULD BE SET ON A SYSTEM-WIDE BASIS; REGULATORY FEES SHOULD BE IN PARITY WITH OTHER COMPARABLE PRIVATE AND COMMON CARRIER SYSTEMS.**

For the long term, RMD urges that regulatory fees for 900 MHz SMR licensees be based upon a system approach, as more broadly urged by RMD in connection with the long-pending "Phase II" 900 MHz SMR licensing proceeding.<sup>6</sup> A fee imposed on a per licensed site basis would penalize licensees for increasing the density of their coverage and the efficiency of their frequency use. Such a result would be harmful to the public interest in the efficient use of spectrum and contrary to the Congressional intent of charging licensees regulatory fees that are based upon the benefits conferred upon them by virtue of the licenses granted by the Commission. The nature of the benefits granted by the Commission involve the right to exclusive use of specified frequencies over a particular area; increasing the density of such use over the licensed area to improve spectral efficiency and to provide innovative service is a value created by the licensee that should not be discouraged with higher fees.

Although not necessarily a perfect solution,<sup>7</sup> RMD believes that the per system fee approach applied to cellular licensees is a better starting point for considering fees to be applied to 900 MHz SMR systems. In this regard, just as the Commission is creating other elements of regulatory parity between cellular and SMR systems,<sup>8</sup> RMD urges regulatory fees also should be equalized so that the fees for cellular and SMR licensees

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<sup>6</sup> Report and Order and Further Notice of Proposed Rulemaking, 71 R.R.2d 1298 (1993).

<sup>7</sup> RMD notes that the Commission has asked for comment on whether the fees imposed upon cellular carriers which are based on subscribership are reasonably related to the benefits conferred. RMD offers no comment, at this time, as to the particular level of fees imposed on cellular carriers; but asserts only that a per system as opposed to per base station fee scale is more equitable.

<sup>8</sup> See Second Report and Order, Implementation of Sections 3(n) and 332 of the Communications Act FCC 94-31 (March 7, 1994).

are each paid on a per system basis — whether that be based on a per subscriber or, in terms of benefits granted, per MHz licensed over a particular area, basis. In any event, just as for cellular licensees, the number of base stations employed or frequencies reused within a particular licensed area should not be considered for fee purposes.

D. CONCLUSION.

The statute requires that regulatory fees be "reasonably related to the benefits provided to the payer of the fee by the Commission's activities."<sup>9</sup> Charging 900 MHz SMR licensees for each individually licensed base station and frequency, whether or not any additional right to exclusive use is granted, does not accomplish this purpose and should not be required.

Respectfully submitted,

RMD MOBILE DATA USA  
LIMITED PARTNERSHIP

By: /s/

  
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<sup>9</sup> 47 U.S.C. § 159(b)(1)(A).